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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

ERNESTO SALVADOR MACIAS,

Defendant and Appellant.

C060244

(Super. Ct. No.
SF106086A)

Convicted of recklessly evading police (Veh. Code, § 2800.2), first degree residential burglary (Pen. Code, § 459; unspecified section references that follow are to the Penal Code), and four counts of receiving stolen property (§ 496, subd. (a)), defendant Ernesto Salvador Macias was sentenced to an aggregate term of five years eight months in state prison. Ordered to pay direct restitution to his victims pursuant to section 1202.4, subdivision (a), defendant also was ordered to pay a restitution fine of \$1,200 pursuant to section 1202.4, subdivision (b). The trial court further ordered defendant to

pay a 10 percent administrative surcharge totaling \$120 in connection with the restitution fine. (§ 1202.4, subd. (l).)

Defendant's sole contention on appeal is that the \$120 administrative fee the trial court added to his restitution fine was not authorized by section 1202.4, subdivision (l). Defendant maintains that administrative fees under section 1202.4, subdivision (l) are intended to cover the county's cost of collecting the fines and since he will be in prison, the Department of Corrections and Rehabilitation, not San Joaquin County, will incur the costs of collection. Accordingly, he argues, the surcharge is unauthorized.

Section 1202.4, subdivision (l) provides: "At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county."

Whether the statute authorizes imposition of the surcharge when a defendant has been sentenced to prison, defendant fails to cite any evidence in the record that the county will not incur administrative costs in collecting defendant's restitution fine. (See *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282-283 [argument of counsel is insufficient; briefs must contain factual underpinning, record references, argument, and authority].) As can be seen, the statute does not require proof that the county will incur collection costs before the

administrative fee can be assessed. If defendant contends that the fee is in some manner illegal or unconstitutional because there will be more costs, he is obligated to present evidence to that effect. He has not done that nor, do we think, could he. Even if California Department of Corrections and Rehabilitation collects the money and, without more, remits it to the county, the county will still incur costs at least in accounting for it and depositing it to the county's accounts. We find no error.

The recent amendments to section 4019 do not operate to modify defendant's entitlement to credit, as he was committed for a serious felony. (§ 4019, subds. (b)(2) & (c)(2); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.)

DISPOSITION

The judgment is affirmed.

HULL, J.

I concur:

CANTIL-SAKAUYE, J.

I concur in the judgment.

BLEASE, Acting P. J.